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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,094	04/09/2001	Holger Eggers	MO-6283/WW-5	2976

7590

01/23/2003

NORRIS MCLAUGHLIN & MARCUS, P.A.
220 EAST 42ND STREE
30TH FLOOR
NEW YORK, NY 10017

EXAMINER

RIBAR, TRAVIS B

ART UNIT PAPER NUMBER

1711

14

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,094

Applicant(s)

EGGERS ET AL.

Examiner

Travis B Ribar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed December 6, 2002 overcomes the rejections made under 35 USC 112, 101, and 102 put forth in the office action dated June 3, 2002.
2. The examiner maintains all rejections made in the office action dated June 3, 2002 under 35 USC 103 and the double patenting rejections.

Terminal Disclaimer

3. The terminal disclaimer filed on December 6, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of copending application 09/807094 has been reviewed and is NOT accepted.
4. The terminal disclaimer is drawn to the wrong instant case. The instant case should be 09/807294. Presently, the incorrect instant application 09/068322 appears on the terminal disclaimer.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164

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USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 2-6, 8, and 10 are provisionally rejected under the judicially created doctrine of double patenting over claims 2-6, 8, and 15 of copending Application No. 09/807294. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter. The office action dated June 3, 2002 contains the text of this rejection.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh in view of the combined teachings of Khanna et al. and Mizutani et al.

The office action dated June 3, 2002 contains the text of this rejection.

Response to Arguments

9. Applicant's arguments filed December 6, 2002 have been fully considered but they are not persuasive.

10. The applicant argues that the examiner's use of Mizutani et al. does not render the invention obvious because there is no mention of the nucleating agent's size and that the polymer in the reference is not the same as the polymer in Khanna et al. The examiner respectfully disagrees with both these points.

The claimed physical properties of the nucleating agent were held to be inherent properties of the nucleating agent and therefore present in Mizutani et al. The attached reference from www.devicelink.com supports the examiner's position of inherency (see page 3, for example). In addition, Mizutani et al. discloses that the same polymer Khanna et al. uses is compatible with its invention (column 11, line 26). The applicant's argument regarding the cooling rate in Mizutani et al. is moot because this limitation has been removed from the claims. The examiner therefore maintains his use of Mizutani et al. in the present context.

11. The applicant also argues that Ramesh is drawn to a shrinkable film, where the present invention is not necessarily shrinkable. Since this property is not claimed or expressly not claimed, the examiner does not deem that property

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of the film in Ramesh to be enough to place the reference outside the realm of analogous art.

12. The applicant's claim of unusual results is not sufficiently supported by the record and therefore is not sufficient to overcome the prior art rejections.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis B Ribar whose telephone number is (703) 305-3140. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

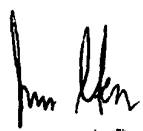
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Travis B Ribar
Examiner
Art Unit 1711

TBR
January 15, 2003



James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700